

## Assembly Bill No. 3032

### CHAPTER 1165

An act to amend Sections 22008, 22112.5, 22134, 22451.5, 22451.7, 23805, 23806, 23809, 23855, 23856, 24002, 24006, 24007, 24009, 24016, 24017, 24106, 24108, 24211, 24212, 24213, 24414, and 26139 of, to amend, repeal, and add Section 22139 of, to add Sections 22119.2, 22123.5, and 26112.5 to, to repeal Sections 22112, 22114, 23807, 23808, 23857, and 24008 of, and to repeal and add Sections 22111, 22123, and 24600 of, the Education Code, relating to school employees.

[Approved by Governor September 30, 1996. Filed  
with Secretary of State September 30, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 3032, Burton. School employees: retirement.

The State Teachers' Retirement Law provides disability and family benefits for dependent unmarried children who are under 18 years of age and dependent unmarried children who are under 22 years of age and full-time students, as defined.

This bill would provide disability and family benefits for all dependent unmarried children up to the attainment of 22 years of age and would define the terms "child's portion" and "children's portion" for purposes of benefits. Those provisions would be repealed on January 1, 2002.

The State Teachers' Retirement Law defines the terms "compensation" and "salary" for purposes of determining benefits and contributions and provides that employer and member contribution rates are based upon members' compensation and salaries.

This bill would repeal that provision and would instead define the terms "creditable compensation" and "final compensation" for purposes of determining benefits and contributions. The bill would provide that any employer or person who knowingly or willfully reports compensation and salary inconsistent with the provisions of the bill would be required to reimburse the system for any overpayments. The bill would make technical changes in other provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 22008 of the Education Code is amended to read:

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions, the period of limitation

of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, or beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, or beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, or beneficiary to receive benefits under the plan, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, or other party in relation to or on behalf of a member, or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

SEC. 2. Section 22111 of the Education Code is repealed.

SEC. 3. Section 22111 is added to the Education Code, to read:

22111. "Child's portion" or "children's portion" means the amount of a disability allowance, disability retirement allowance, family allowance, or survivor benefit allowance payable for a dependent child or dependent children.

SEC. 4. Section 22112 of the Education Code is repealed.

SEC. 5. Section 22112.5 of the Education Code is amended to read:

22112.5. (a) "Class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed.

(b) A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers.

(c) The board shall have the right to override the determination by an employer as to whether or not a group or an individual constitutes a "class of employees" within the meaning of this section.

(d) The amendments to this section during the 1995-96 Regular Session of the Legislature shall be deemed to have become operative on July 1, 1996.

SEC. 6. Section 22114 of the Education Code is repealed.

SEC. 7. Section 22119.2 is added to the Education Code, to read:

22119.2. (a) “Creditable compensation” means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member’s absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

(4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts deducted by an employer from the member’s salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines to be “creditable compensation.”

(b) “Creditable compensation” does not mean and shall not include:

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of this plan in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

(8) Compensatory damages or money paid to a member in excess of creditable compensation as a compromise settlement or as severance pay.

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the plan. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the plan and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

(11) Any other payments the board determines not to be "creditable compensation."

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

SEC. 8. Section 22123 of the Education Code is repealed.

SEC. 9. Section 22123 is added to the Education Code, to read:

22123. (a) "Dependent child" or "dependent children" under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is not older than 22 years of age and who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death.

(b) “Offspring” shall include the member’s child who is born within the 10-month period commencing on the earlier of the member’s disability allowance effective date or the date of the member’s death.

(c) “Offspring” shall include a child adopted by the member.

(d) “Dependent child” shall not include the member’s offspring or stepchild who is adopted by a person other than the member’s spouse.

(e) “Dependent child” under the family allowance program shall not include:

(1) The member’s offspring or stepchild who was financially dependent on the member on the date of the member’s death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(f) “Financially dependent” for purposes of this section means that at least one-half of the child’s support was being provided by the member on the member’s disability allowance effective date or the date of the member’s death. The system may require that income tax records or other data be submitted to substantiate the child’s financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member’s disability allowance or the date of the member’s death.

(g) “Member” as used in this section shall have the same meaning specified in Section 23800.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 9.5. Section 22123 is added to the Education Code, to read:

22123. (a) “Dependent child” or “dependent children” under the disability allowance and family allowance programs means a member’s unmarried offspring or stepchild who is financially dependent upon the member on the effective date of the member’s disability allowance or the date of the member’s death and who meets either of the following:

(1) Is not older than 18 years of age.

(2) Is between 18 and 22 years of age and who is registered as a full-time student as defined in Section 22139 on the effective date of the member’s disability allowance or the date of the member’s death. A dependent child who is a full-time student in the month he or she attains 22 years of age shall be deemed not to have attained that age until the first day of the month following the school quarter or semester that was in progress in the month the person attains 22 years of age.

(b) “Offspring” shall include:

(1) The member’s child who is born within the 10-month period commencing on the earlier of the member’s disability allowance effective date or the date of the member’s death.

(2) A child adopted by the member.

(c) “Dependent child” shall not include the member’s offspring or stepchild who is adopted by a person other than the member’s spouse.

(d) “Dependent child” under the family allowance program shall not include:

(1) A member’s offspring or stepchild who was financially dependent on the member on the date of the member’s death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(e) “Financially dependent” for purposes of this section means that at least one-half of the child’s support was being provided by the member on the member’s disability allowance effective date or the date of the member’s death. The system may require that income tax records or other data be submitted to substantiate the child’s financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member’s disability allowance or the date of the member’s death.

(f) “Member” as used in this section shall have the same meaning specified in Section 23800.

(g) This section shall become operative on January 1, 2002.

SEC. 10. Section 22123.5 is added to the Education Code, to read:

22123.5. (a) “Dependent child” or “dependent children” under the disability retirement and survivor benefit allowance programs means a member’s offspring or stepchild who is not older than 21 years of age and who is financially dependent upon the member on the effective date of the member’s disability retirement or the date of the member’s death.

(b) “Offspring” shall include the member’s child who is born within the 10-month period commencing on the earlier of the member’s disability retirement effective date or the date of the member’s death.

(c) “Offspring” shall include a child adopted by the member.

(d) “Dependent child” shall not include the member’s offspring or stepchild who is adopted by a person other than the member’s spouse.

(e) “Dependent child” under the survivor benefit allowance program shall not include a stepchild or adopted child acquired subsequent to the death of the member.

(f) “Financially dependent” for purposes of this section means that at least one-half of the child’s support was being provided by the member on the member’s disability retirement effective date or the date of the member’s death. The system may require that income tax records or other data be submitted to substantiate the child’s financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member’s disability retirement or the date of the member’s death.

(g) “Member” as used in this section shall have the same meaning specified in Section 23850.

SEC. 11. Section 22134 of the Education Code is amended to read:

22134. (a) “Final compensation” means the highest average annual compensation earnable by a member during any period of three consecutive years while an active member of the plan or time during which he or she was not a member but for which the member has received credit under the plan, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who is also a member of the Public Employees’ Retirement System, the Legislators’ Retirement System, the University of California Retirement System, or the San Francisco City and County Employees’ Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this plan.

(3) Retirement under this plan is concurrent with the member’s retirement under the other system.

(d) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23804.

(e) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this plan under board rules in effect prior to that date.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The earnable salaries for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 12. Section 22139 of the Education Code is amended to read:

22139. "Full-time student" means a dependent child between 18 and 22 years of age who is in full-time attendance at an educational institution. An individual shall not qualify as a full-time student if attendance at an educational institution is paid for or provided by the individual's employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time course of study that is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America. The final determination whether a person qualifies as a full-time student shall be made by the board in light of the standards and practices of the institution involved.

This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 12.5. Section 22139 is added to the Education Code, to read:

22139. (a) "Full-time student" means a dependent child between 18 and 22 years of age:

(1) Who is in full-time attendance at an educational institution.

(2) For whom during any normal period of vacation or holiday of the institution involved there is sufficient evidence to satisfy the board of the dependent child's intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) "Full-time student" does not mean and shall not include:

(1) A person who fails to return to full-time attendance immediately following any normal period of vacation or holiday.

(2) A person during a period of nonattendance if the nonattendance is due to expulsion or suspension.

(3) A person whose attendance at an educational institution is paid for and provided by the employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given.





(4) A person whose full-time course of study is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America.

(c) The final determination whether a person qualifies as a full-time student shall be made by the board in light of the standards and practices of the institution involved.

(d) This section shall become operative on January 1, 2002.

SEC. 13. Section 22451.5 of the Education Code is amended to read:

22451.5. (a) Upon request by the system, a member shall provide proof of his or her date of birth to resolve any discrepancy between the member's date of birth as originally documented on the records of the system and the member's date of birth as subsequently submitted.

(b) A member shall provide proof of the date of birth of a person designated by the member as beneficiary under an option selected pursuant to Chapter 28 (commencing with Section 24300) if the beneficiary is not also a member of the plan.

(c) Documentation substantiating the date of birth of a member's dependent child shall be provided if an allowance payable under this part will include an amount for that dependent child.

(d) At the time application is made for payment of a family allowance or survivor benefit allowance to a surviving spouse or dependent parent, a member's surviving spouse or dependent parent shall provide proof of his or her date of birth.

(e) At the discretion of the board, an original document, a certified copy of the original, or a photocopy shall be acceptable to establish proof of the date of birth.

SEC. 14. Section 22451.7 of the Education Code is amended to read:

22451.7. The system may withhold benefit payments until proof of the date of birth of a member, beneficiary under an option selected pursuant to Chapter 28 (commencing with Section 24300), surviving spouse, dependent child or dependent parent has been received and accepted by the system.

SEC. 15. Section 23805 of the Education Code is amended to read:

23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the deceased member's surviving spouse who has financial responsibility for at least one dependent child, an amount equal to 40 percent of the member's final compensation or the disabled member's projected final compensation plus 10 percent of the member's final compensation or the disabled member's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each dependent child, an amount equal to 10 percent of the deceased member's final compensation or the disabled member's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five dependent children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at age 60 years or over if there is no dependent child, an allowance equal to the amount that would have been payable to the spouse as beneficiary under Option 3 as provided in Section 24300, computed on the member's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member or disabiltant as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave credit and the calculation of that service credit shall be determined pursuant to Section 22717.

(d) If there is neither surviving spouse nor dependent child, to the dependent parent, age 60 years or over, an allowance equal to the amount that would have been payable to the dependent parent as beneficiary under Option 3 as provided in Section 24300 computed on the member's projected final compensation and projected service to normal retirement age. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave and the calculation of that service credit shall be determined pursuant to Section 22717. If there are two dependent parents, only one family allowance shall be payable under this subdivision and that allowance shall be computed on the assumption that the younger parent is the option beneficiary and the allowance shall be divided equally for as long as there are two dependent parents. Thereafter, the full allowance shall be payable to the surviving dependent parent.

(e) The surviving spouse or dependent parent may elect to begin receiving the family allowance payable under subdivision (c) or (d) immediately upon the later of the death of the member or when there is no dependent child, or to defer receipt of the allowance to the date the surviving spouse or dependent parent attains age 60 years. If allowance payments commence prior to the date the surviving spouse or dependent parent attains age 60 years, the allowance payable shall be actuarially reduced.

(f) If there is no dependent child, a surviving spouse or dependent parent or parents may elect, prior to receipt of the first payment



under subdivision (c) or (d), to receive the member's accumulated retirement contributions in a lump sum subject to a reduction for any disability allowance or family allowance payments previously made.

SEC. 16. Section 23806 of the Education Code is amended to read:

23806. (a) A dependent child who is not in the care of the surviving spouse shall be included in the calculation of the family allowance. That child's portion of the allowance shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child.

(b) In the case of a dependent child age 18 years or older, the child's portion of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

SEC. 17. Section 23807 of the Education Code is repealed.

SEC. 18. Section 23808 of the Education Code is repealed.

SEC. 19. Section 23809 of the Education Code is amended to read:

23809. The family allowance payable to the surviving spouse who has financial responsibility for at least one dependent child, or the family allowance payable to a dependent child, shall be reduced by an amount equal to the unmodified benefits paid or payable from other public systems for the same event which qualified the surviving spouse or dependent child for the family allowance.

SEC. 20. Section 23855 of the Education Code is amended to read:

23855. (a) The survivor benefit allowance is a monthly allowance equal to one-half of the modified retirement allowance the member would have received at age 60 years, if the member had retired and elected Option 3 as provided in Section 24300, naming the spouse as the option beneficiary.

(b) The allowance payable under this subdivision shall be based on the member's actual service credit and final compensation as of the date of his or her death, the age 60 retirement factor, and the member's and spouse's ages as of the date the member would have attained age 60 years. If the member's death occurs after he or she attains age 60 years, his or her actual final compensation, the age 60 retirement factor, and the member's and spouse's ages as of the date of the member's death shall be used in the allowance calculation.

(c) The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of unused sick leave service credit and the calculation of that service credit shall be determined pursuant to Section 22717.

(d) The surviving spouse may elect to begin receiving the survivor benefit allowance immediately as of the date of the member's death or to defer receipt of the allowance to the date the member would have attained age 60 years. If allowance payments to the surviving spouse commence prior to the date the member would



have attained age 60 years, the allowance payable shall be actuarially reduced.

(e) If the spouse elects, pursuant to Section 23852, to receive the survivor benefit allowance, an additional 10 percent of final compensation shall be payable for each dependent child who is not older than age 21 years, up to a maximum of 50 percent of final compensation. The child's portion shall begin to accrue on the day following the member's date of death and shall be payable even if the spouse elects to postpone receipt of the spouse's survivor benefit allowance until the date the member would have attained age 60 years.

SEC. 21. Section 23856 of the Education Code is amended to read:

23856. (a) A dependent child who is not in the care of the surviving spouse shall be included in the calculation of the children's portion of the survivor benefit allowance. That child's portion of the allowance shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child.

(b) In the case of a dependent child who is age 18 years or older, the child's portion of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

SEC. 21.5. Section 23857 of the Education Code is repealed.

SEC. 22. Section 24002 of the Education Code is amended to read:

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application by the member, the member's guardian or conservator, or the member's employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of service and the incapacity has been continuous from the last day of service for which compensation is payable to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of service, and within four months after the last day of service for which compensation is payable to the member, or within 12 months of that date if the member is on an employer-approved leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment subject to coverage by the plan, if the application was not made under subdivision (b) and was not made more than four months after the last day of service for which compensation is payable to the member.



(e) A member with a dependent child who becomes disabled prior to normal retirement age, and whose sick leave will extend beyond normal retirement age, may be awarded a disability allowance with an effective date after normal retirement age, if application is filed prior to attaining normal retirement age.

(f) The member is not applying for a disability allowance because of a physical or mental condition that existed at the time the most recent membership in the plan commenced and which remains substantially unchanged at the time of application.

SEC. 23. Section 24006 of the Education Code is amended to read:

24006. Upon qualification for disability, a member shall receive an annual allowance equal to 50 percent of final compensation payable in monthly installments. The allowance shall be increased by 10 percent of final compensation for each dependent child, to a maximum of four dependent children.

SEC. 24. Section 24007 of the Education Code is amended to read:

24007. A member who qualifies for a disability allowance under this chapter and who has attained age 45 years, but who has not yet attained age 60 years, shall have his or her allowance calculated upon service with each year of credited California service providing 5 percent of final compensation. The disabled member shall receive the lesser of this amount or the amount provided by Section 24006. A child's portion of the allowance shall be determined pursuant to Section 24006.

SEC. 25. Section 24008 of the Education Code is repealed.

SEC. 26. Section 24009 of the Education Code is amended to read:

24009. A disability allowance payable pursuant to Sections 24006 and 24007 that includes a child's portion shall be reduced when a dependent child becomes ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the member's disability allowance shall not be less than it would have been if there had never been a dependent child.

SEC. 27. Section 24016 of the Education Code is amended to read:

24016. (a) For any one or more months in which the total of a disabled member's allowance, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 100 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

(b) This action shall not apply to disabled members who have allowances terminated under Section 24015 or who are enrolled in an approved rehabilitation program.

SEC. 28. Section 24017 of the Education Code is amended to read:

24017. If a person who began receiving a disability allowance after June 30, 1972, is enrolled in an approved rehabilitation program and the total of the disability allowance, excluding children's portions, and earnings exceed 100 percent of indexed final

compensation, 50 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

SEC. 29. Section 24106 of the Education Code is amended to read:

24106. Upon retirement for disability pursuant to this chapter, a member shall receive a retirement allowance that shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each dependent child, up to a maximum of 40 percent of final compensation. If there are more than four dependent children, they shall share equally in the maximum allowance of 40 percent. A dependent child may waive his or her right to his or her portion of the allowance in accordance with procedures established by the system.

(c) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

SEC. 30. Section 24108 of the Education Code is amended to read:

24108. A retirement allowance payable pursuant to Section 24106 that includes a child's portion shall be reduced when a dependent child becomes ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the retired member's allowance shall not be less than it could have been if there had never been a dependent child.

SEC. 31. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance after June 30, 1972, returns to employment subject to coverage by the plan and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.



(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

SEC. 32. Section 24212 of the Education Code is amended to read:

24212. If a disability allowance granted after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage by the plan, the service retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

SEC. 33. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 34. Section 24414 of the Education Code is amended to read:

24414. (a) Beginning in the 1989-90 fiscal year, and until the first fiscal year in which the Supplemental Benefit Maintenance Account established by Section 22400 derives sufficient resources from the General Fund pursuant to Section 22954 to provide purchasing power of 68.2 percent as authorized by Section 24415, the board shall transfer from the retirement fund to the Supplemental Benefit Maintenance Account those funds that are necessary to provide purchasing power of 68.2 percent as authorized by Section 24415. This subdivision shall become inoperative in the first fiscal year following the joint determination by the board and the Director of Finance that the funds scheduled for transfer from the General Fund pursuant to

Section 22954 to the Supplemental Benefit Maintenance Account are adequate to meet the purposes of Section 24415.

(b) The funds advanced pursuant to subdivision (a) and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments shall be repaid from those funds transferred pursuant to Section 22954 that are in excess of the resources required to meet the purposes of Section 24415. Repayment shall commence in any year in which those excess funds exist and shall continue until the time all funds advanced under this section and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments are repaid. Repayment shall include regular interest from the time funds are advanced or appropriated until the time of repayment. After full repayment is made, the Director of Finance shall, notwithstanding Section 22954, adjust the percentage of the General Fund transfer in the amount which causes the balance in the account to equal a three-year reserve at the end of the subsequent fiscal year. The Director of Finance may base the adjusted rate on data provided by the board for projected payments in subject years, projected payroll, projected interest accrual to the account, and any other factors deemed relevant by the board.

(c) Notwithstanding Section 24415 or any other provision of law, if the state's contributions to the retirement fund provided by Section 22954 are, for any reason whatsoever, reduced or terminated before the retirement fund is fully repaid, as provided in subdivision (b), for all advances or transfers made pursuant to subdivision (a) and for any appropriations made by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments, all duties of the board to make the advances or transfers required by subdivision (a) and to make the distributions required by Section 24415 shall immediately cease and shall have no further force or effect.

(d) It is the intent of the Legislature, in enacting the Supplemental Benefit Maintenance Program embodied in this section and Section 22400, subdivision (b) of Section 22954, Section 24415, subdivision (b) of Section 44929, and subdivision (b) of Section 87488, not to manifest any promise, except as provided in subdivision (c) of Section 22954, that, when accepted, would create a contract, express or implied. Notwithstanding any other provision of this part, nothing in the sections establishing the Supplemental Benefit Maintenance Program shall be construed as a basis for any implied contractual obligation, or as an element of exchange of consideration by a private party for consideration offered by the state, or as an intent to grant private rights of contract, or as conferring any vested right whatsoever on any present or future member, present or future annuitant, present or future surviving spouse of a present or future





member or a present or future annuitant, dependent child or dependent parent of a present or future member or a present or future annuitant, or present or future beneficiary of the plan.

(e) The board shall report annually to the Director of Finance and the appropriate fiscal and policy committees of the Legislature upon the benefits paid pursuant to Section 24415 and all actions taken pursuant to Section 22954 and this section.

SEC. 35. Section 24600 of the Education Code is repealed.

SEC. 36. Section 24600 is added to the Education Code, to read:

24600. (a) A retirement allowance begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(1) Until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is eligible as a full-time student to receive a child's portion of an allowance shall continue to be eligible for a child's portion until the person attains 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age.

(2) Notwithstanding subdivision (e) of Section 22123, until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is not eligible as a full-time student to

receive a child's portion of an allowance, may return to school on a full-time basis on or after January 1, 1997, and become eligible for a child's portion from the date of return to full-time student status until 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age. No benefits shall be payable under this paragraph for a person who does not return to school as a full-time student prior to attaining 22 years of age.

(g) Supplemental payments issued pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan by the system shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100), not later than April 1 of the calendar year following the later of both of the following:

(A) The calendar year in which the member attains age 70<sup>1</sup>/<sub>2</sub> years.

(B) The calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains age 70<sup>1</sup>/<sub>2</sub> years; or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of the termination of employment subject to coverage by the plan or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 36.5. Section 24600 is added to the Education Code, to read:

24600. (a) A retirement allowance begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan by the system shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the

required beginning date of benefit payments that represent the entire interest of the member in the plan shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70  $\frac{1}{2}$  years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70  $\frac{1}{2}$  years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the plan or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 37. Section 26112.5 is added to the Education Code, to read:

26112.5. (a) "Class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed.

(b) A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers.

(c) The board shall have the right to override the determination by an employer as to whether or not a group or an individual constitutes a "class of employees" within the meaning of this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

SEC. 37.5. Section 26139 of the Education Code is amended to read:

26139. (a) "Salary" means remuneration payable in cash by an employer to a participant for creditable service. Salary shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed.

(2) For participants not paid according to a salary schedule, money paid for creditable service performed.

(3) Money paid for the participant's absence from performance of creditable service as approved by an employer, except as provided in paragraph (5) of subdivision (b).

(4) Employee contributions picked up by an employer under Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code.

(5) Amounts deducted by an employer from the participant's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines by plan amendment to be "salary."

(b) "Salary" does not mean and shall not include:

(1) Money paid for service that is not creditable service.

(2) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Fringe benefits provided by an employer.

(4) Job-related expenses paid or reimbursed by an employer.

(5) Money paid for unused accumulated leave.

(6) Compensatory damages or money paid to a participant in excess of salary as a compromise settlement or as severance pay.

(7) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for a participant.

(8) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a participant's benefits under the plan.

(9) Any other payments the board determines by plan amendment not to be "salary."

(c) Any employer or person who knowingly or willfully reports salary in a manner inconsistent with the provisions of subdivisions (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of such inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with provisions of the Penal Code. The system may establish procedures

to ensure that salary reported by an employer is in compliance with this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

O

